

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

JIM JEFFRIES,

Appellant,

v.

NORTHWEST CLEAN AIR AGENCY,

Respondent.

PCHB NO. 06-007

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

This matter arises from the appeal of a \$500 penalty issued by the Northwest Clean Air Agency on December 15, 2005 to Jim Jeffries. The penalty was imposed for violations of Chapter 70.94, the Clean Air Act, and pursuant to the authority of RCW 70.94.431 and Section 133 of the Regulation of the Northwest Clean Air Agency (NWCAA).

A hearing was held in this matter on June 22, 2006, at a Department of Transportation facility in Mt. Vernon, Washington. Board Member Kathleen D. Mix presided for the Pollution Control Hearings Board, pursuant to RCW 43.21B.305, which allows one board member to determine an appeal of a civil penalty of less than \$15,000. Attorney Steven D. Avery appeared on behalf of the NWCAA.

Mr. Jeffries, who had appeared *pro se*, failed to appear for the hearing. Prior to taking evidence, the Board reviewed the various correspondence that had been sent to Mr. Jeffries to inform him of the date and location of the hearing, including a June 7, 2006 letter to the parties

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 06-007

1 from the Presiding Officer reminding them of the same. Mr. Jeffries did not file any pre-hearing
2 lists of witnesses or exhibits as directed by the Pre-Hearing Order in the case. He did not contact
3 the Board in advance of the hearing and indicate the need for a continuance or other problem
4 with the hearing date. Rather than simply enter an order of default against Mr. Jeffries, the
5 Board determined it would take evidence because the respondent was present with several
6 witnesses.

7 Sandra B. Sullivan of Corpolongo and Associates provided court-reporting services.

8 The Board received the sworn testimony of witnesses, admitted exhibits, and heard the
9 argument of the party present for the appeal. Having fully considered the record, the Board
10 enters the following:

11 FINDINGS OF FACT

12 [1]

13 NWCAA is a regional governmental agency responsible for enforcement of the
14 Washington Clean Air Act in northwest Washington counties, including Skagit and Whatcom
15 counties. Appellant Jim Jeffries owns property located at 22256 Amick Road, Mount Vernon,
16 Washington, within Skagit County. *Testimony of Wefer; Exhibit R-2.*

17 [2]

18 On August 8, 2005, Fred Wefer, fire warden for Island and Skagit counties, responded to
19 a complaint of heavy garbage burning at the Jeffries property outside Mt. Vernon. Mr. Wefer
20 investigates such complaints on behalf of NWCAA. *Testimony of Wefer; Exhibits R-2; R-10.*

21 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 06-007

1 [3]

2 Mr. Wefer found two burn piles at the site. Each pile contained a mixture of household
3 garbage, paper, cardboard, plastics, untreated lumber, and plywood. The majority of material
4 was household garbage. One burn pile was within fifty (50) feet of a residence on the property.
5 A second burn was within fifty (50) feet of a shop. One pile was approximately 5' x 5' x 3' in
6 size. The other was 8' x 10' x 4'. Mr. Wefer took photographs of the burn piles at the site.

7 *Testimony of Wefer; Exhibits R-1; R-2; R-3.*

8 [4]

9 During the August 8 inspection, Mr. Wefer talked with the renter who was living at the
10 residence on the site. The renter expressed concerns that the fires were exposing his children to
11 unhealthy smoke. Based on the discussion with the renter and previous complaints at the site,
12 Mr. Wefer concluded that Mr. Jeffries had started the fires to burn garbage at the site. Mr. Wefer
13 had previously left pamphlets with Mr. Jeffries about burning regulations and had discussed the
14 rules against such burns with him because of the previous complaints of garbage burning at the
15 site. *Testimony of Wefer; Exhibit R-2.*

16 [5]

17 The NWCAA issued a notice of violation on August 18, 2005, alleging three violations of
18 the air regulations, including:

- 19 1. Violation of Section 502.4(A), causing or allowing an outdoor fire in an area where
20 the type burning involved is prohibited, or where it requires a permit;

21 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 06-007

2. Violation of Section 502.4(C), causing or allowing any outdoor fire containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction/demolition debris, metal or any substance other than natural vegetation.

3. Violation of 502.4(H)(2), having a fire within fifty feet of a structure.

The Notice of Violation directed Mr. Jeffries to apprise NWCAA within ten (10) business days of the corrective action he intended to take, and gave him an opportunity to discuss the violation with the Authority. *Exhibit R-4*.

[6]

Mr. Jeffries called the NWCAA to discuss the violation. On September 23, 2005, Mr. Jeffries also sent a letter to the NWCAA, responding to the notice of violation and explaining his circumstances. In the letter he stated “ I take 99% responsibility for the actions on my property.” *Exhibit R-5.*

[7]

On December 15, 2005, the NWCAA imposed a penalty of \$500 against Mr. Jeffries for the various violations of the agency regulations, set forth in the Notice of Violation. The penalty was calculated by use of the NWCAA “Civil Penalty Guidelines” (July 10, 2003) and application of an “economic benefit” component, which analyzes the costs avoided by the violator. *Exhibits R-6; R-11*. With respect to the “gravity” component of the civil penalty guidelines, NWCAA considered the burns to be a “1st violation”, under the category of “single

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 06-007

1 and multiple family units.” The penalty range for such a violation is \$100 to \$750. The
2 “economic benefit” analysis resulted in a calculation of \$34 in avoided costs. NWCAA also
3 incurred a fee of \$40 in service costs. In calculating the penalty, the Agency considered the fact
4 that Mr. Jeffries had responded to the violation in writing, and stated that he would ensure future
5 compliance and not be in violation of the regulations again. The inspector recommended that
6 \$350 of the penalty be suspended on the condition that Mr. Jeffries enter into an Assurance of
7 Discontinuance. Because he declined to do so, NWCAA imposed the full penalty amount.

8 *Testimony of Rebecca Brown; Exhibits R-6; R-8; R-11.*

9 Any Conclusion of Law deemed a Finding of Fact is hereby adopted as such.

11 CONCLUSIONS OF LAW

12 [1]

13 The Board has jurisdiction over the subject matter and parties pursuant to RCW 43.21B
14 and RCW 70.94. The Board reviews the issues raised in an appeal *de novo*. WAC 371-08-485.

15 [2]

16 It is the policy of the State to “reduce outdoor burning to the greatest extent possible.”
17 RCW 70.94.743(1). Outdoor burning of garbage and other materials that normally emit dense
18 smoke and obnoxious odors is prohibited. RCW 70.94.775(1). These policies are implemented
19 through regulations contained at WAC Chapter 173-425 and by local air pollution control
20 authorities.

21 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 06-007

1 [3]

2 Property owners are generally held responsible for fires on their land that violate the
3 Clean Air Act, whether through direct actions on their part, or through creating a substantial risk
4 that an unauthorized fire would occur on the property. *Longwell v. Benton County Clean Air*
5 *Authority, PCHB No. 95-96 (1996); Salazar v. PSAPCA, PCHB No. 88-59 (1988).*

6 [4]

7 The un rebutted evidence established that two outside, unpermitted burns occurred on
8 property owned by Mr. Jeffries on or about August 7-8, 2005. The evidence before the Board
9 established that Mr. Jeffries himself started such fires. Each of these burns included prohibited
10 materials, including household garbage, plastics, and other wood or paper materials. Each burn
11 was within fifty (50) feet of a structure on the property. These actions constitute violations of
12 local air regulations Sections 502.4(A), 502.4(C), and 502.4(H)(2). Such burns are prohibited
13 under WAC 173-425-040, -050, and -060.

14 [5]

15 The Board considers three factors when it evaluates the reasonableness of a penalty:
16 (1) the nature of the violation, (2) the prior history of the violator, and (3) the remedial actions
17 taken by the penalized party. *Douma v. Ecology, PCHB No. 00-019 (2005); Crestview*
18 *Development, Inc. v. PSCAA, PCHB No. 04-059 (2004).* As a part of such an analysis, the Board
19 has also looked to whether the appellant gave any reason for refusing to cooperate with agency
20
21

1 efforts to bring a project into compliance with the law, and the fact that a lesser penalty than
2 allowed by law was imposed. *Piccolo v. Ecology, PCHB No. 05-154 (2006)*.

3 [6]

4 The fires on Mr. Jeffries property were in direct violation of the air regulations, and
5 caused obnoxious, if not toxic, smoke in the area of the fire. The fires were close to structures,
6 creating a greater safety hazard and risk of a larger fire. Thus, the nature of the violations was
7 serious. Mr. Jeffries had a history of warnings for other outside, unpermitted burns. He had
8 been warned that this was prohibited by regulations, both verbally and with written materials. At
9 the time of the Notice of Violation, Mr. Jeffries committed to change his behavior, and
10 discontinue burning materials on his property. This factor was taken into account by the air
11 agency in the calculation of the penalty amount.

12 [7]

13 The Board concludes that based on the evidence and application of the three factors
14 discussed above, that the \$500 penalty imposed by NWCAA is reasonable. The NWCAA
15 imposed a lesser penalty than allowed by its own guidelines, and considered Mr. Jeffries'
16 commitment to have no further outside burning on his property. The \$500 penalty is
17 substantially less than the maximum amount authorized by law for violations of the Clean Air
18 Act. *See, RCW 70.94.431(1)*.

19
20
21 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 06-007

1 ORDER

2 The penalty issued by the Northwest Clean Air Agency on December 15, 2005, to Jim
3 Jeffries is AFFIRMED.

4 DONE this 27th day of June 2006.

5 POLLUTION CONTROL HEARINGS BOARD

6 KATHLEEN D. MIX, Presiding Member
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 06-007